

AMENDED IN SENATE APRIL 13, 2010

AMENDED IN ASSEMBLY MAY 5, 2009

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CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 646

Introduced by Assembly Member Swanson

(Coauthors: Assembly Members Beall, Buchanan, Chesbro, Coto, De Leon, Evans, Fong, Fuentes, Furutani, Hall, Jeffries, Lieu, Bonnie Lowenthal, Ma, Mendoza, Nava, Portantino, Price, Salas, Skinner, and Torres)

(Coauthors: Senators DeSaulnier and Wiggins Price, Romero, Wiggins and Yee)

February 25, 2009

An act to amend, *repeal, and add* Section 2401 of, and to repeal Section 2401.1 of, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 646, as amended, Swanson. Physicians and surgeons: employment.

Existing law, the Medical Practice Act, restricts the employment of licensed physicians and surgeons and podiatrists by a corporation or other artificial legal entity, subject to specified exemptions, and makes it a crime to practice medicine without a license. Existing law establishes, until January 1, 2011, a pilot project to allow qualified district hospitals that, among other things, provide more than 50 percent 50% of patient days to the care of Medicare, Medi-Cal, and uninsured patients, to employ a physician and surgeon, if the hospital does not

interfere with, control, or otherwise direct the professional judgment of the physician and surgeon. The pilot project authorizes the direct employment of a total of 20 physicians and surgeons by those hospitals to provide medically necessary services in rural and medically underserved communities, and specifies that each qualified district hospital may employ up to 2 physicians and surgeons, subject to specified requirements.

This bill would delete that pilot project and would instead, *until January 1, 2021*, authorize a health care district, as defined, *and a clinic owned or operated by a health care district, as specified*, to employ physicians and surgeons if the health care district's service area includes a Medically Underserved Area (MUA) or a Medically Underserved Population (MUP), or has been federally designated as a Health Professional Shortage Area (HPSA); *the district board conducts a public hearing and adopts a specified resolution declaring the need for the district to recruit and directly employ one or more physicians and surgeons*; and the ~~chief~~ executive officer of the district provides specified documentation to the Medical Board of California. Upon receipt of that documentation, the bill would require the board to approve the employment of up to 5 primary or specialty care physicians and surgeons by the district, and, upon receipt of additional documentation after that employment, to approve an additional 5 primary or specialty care physicians and surgeons. The bill would provide that a district may, until December 31, 2020, enter into, renew, or extend any employment contract with a physician and surgeon for up to 10 years. The bill would require the Office of Statewide Health Planning and Development, in consultation with the State Department of Public Health and the board, to report to the Legislature by June 1, 2018, with regard to the efficacy of the employment of physicians and surgeons by health care districts, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 2401 of the Business and Professions
- 2 Code is amended to read:
- 3 2401. (a) Notwithstanding Section 2400, a clinic operated
- 4 primarily for the purpose of medical education by a public or
- 5 private nonprofit university medical school, which is approved by

1 the ~~Division of Licensing~~ *board* or the Osteopathic Medical Board
2 of California, may charge for professional services rendered to
3 teaching patients by licensees who hold academic appointments
4 on the faculty of the university, if the charges are approved by the
5 physician and surgeon in whose name the charges are made.

6 (b) Notwithstanding Section 2400, a clinic operated under
7 subdivision (p) of Section 1206 of the Health and Safety Code
8 may employ licensees and charge for professional services rendered
9 by those licensees. However, the clinic shall not interfere with,
10 control, or otherwise direct the professional judgment of a
11 physician and surgeon in a manner prohibited by Section 2400 or
12 any other provision of law.

13 (c) Notwithstanding Section 2400, a narcotic treatment program
14 operated under Section 11876 of the Health and Safety Code and
15 regulated by the State Department of Alcohol and Drug Programs,
16 may employ licensees and charge for professional services rendered
17 by those licensees. However, the narcotic treatment program shall
18 not interfere with, control, or otherwise direct the professional
19 judgment of a physician and surgeon in a manner prohibited by
20 Section 2400 or any other provision of law.

21 (d) (1) Notwithstanding Section 2400, a health care district
22 operated pursuant to Division 23 (commencing with Section 32000)
23 of the Health and Safety Code may employ physicians and
24 surgeons, and may charge for professional services rendered by a
25 physician and surgeon, if the physician and surgeon in whose name
26 the charges are made approves the charges, and if all of the
27 following conditions are met:

28 (A) The service area of the health care district includes a
29 Medically Underserved Area (MUA) or a Medically Underserved
30 Population (MUP), *as defined in Section 127928 of the Health and*
31 *Safety Code*, or has been federally designated as a Health
32 Professional Shortage Area (HPSA).

33 ~~(B) (i) The chief executive officer of the health care district~~
34 ~~documents that the district has been actively attempting and unable~~
35 ~~to recruit a primary or specialty care physician and surgeon for~~
36 ~~any 12 consecutive month period, beginning on or after July 1,~~
37 ~~2008.~~

38 ~~(ii) The chief executive officer submits an application to the~~

39 ~~(B) The board conducts a public hearing and adopts a formal~~
40 ~~resolution declaring that a need exists for the district to recruit~~

1 *and directly employ one or more physicians and surgeons to serve*
2 *unmet community need.*

3 *(C) The resolution shall include all of the following findings*
4 *and declarations:*

5 *(i) Patients living within the community have been forced to*
6 *seek care outside of the community, or have faced extensive delays*
7 *in access to care, due to the lack of physicians and surgeons.*

8 *(ii) The communities served by the district lack sufficient*
9 *numbers of physicians and surgeons to meet community need or*
10 *have lost or are threatened with the impending loss of one or more*
11 *physicians and surgeons due to retirement, planned relocation, or*
12 *other reasons.*

13 *(iii) The district has been actively working to recruit one or*
14 *more physicians and surgeons to address unmet community need,*
15 *or to fill an impending vacancy, for a minimum of 12 consecutive*
16 *months, beginning July 1, 2008, without success.*

17 *(iv) The direct employment of one or more physicians and*
18 *surgeons by the district is necessary in order to augment or*
19 *preserve access to essential medical care in the communities served*
20 *by the district.*

21 *(D) The resolution shall also do the following:*

22 *(i) Direct the district's executive officer to begin actively*
23 *recruiting one or more physicians and surgeons, up to the limits*
24 *specified in this chapter, as district employees.*

25 *(ii) Prohibit the executive officer from actively recruiting or*
26 *employing a physician and surgeon who is currently employed by*
27 *a federally qualified health center, rural health center, or other*
28 *community clinic not affiliated with the district.*

29 *(E) Upon adoption of the resolution by the board, the executive*
30 *officer shall submit an application to the board certifying the*
31 *district's inability to recruit one or more physicians and surgeons,*
32 *including all relevant documentation, certifying that the inability*
33 *to recruit primary or specialty care physicians and surgeons has*
34 *negatively impacted patient care in the community, and that the*
35 *employment of physicians and surgeons by the district would meet*
36 *a critical, unmet need in the community based upon a number of*
37 *factors, including, but not limited to, the number of patients*
38 *referred for care outside of the community, the number of patients*
39 *who experienced delays in treatment, the length of treatment*
40 *delays, and negative patient outcomes.*

1 (2) Upon receipt and review of the ~~certification~~ *application*,
2 *adopted resolution*, and *all relevant documentation* of the district's
3 inability to recruit a physician and surgeon as specified in
4 subparagraph ~~(B)~~ (E) of paragraph (1), the board shall approve
5 and authorize the employment of up to five primary or specialty
6 care physicians and surgeons by the district.

7 (3) Upon receipt and review of subsequent ~~certification~~
8 *documentation* of the need for additional primary or specialty care
9 physicians and surgeons by the district, the board shall approve
10 and authorize the employment of up to five additional primary or
11 specialty care physicians and surgeons by the district.

12 (4) Employment contracts with physicians and surgeons issued
13 pursuant to this subdivision shall be for a period of not more than
14 10 years, but may be renewed or extended. Districts may enter
15 into, renew, or extend employment contracts with physicians and
16 surgeons pursuant to this subdivision until December 31, 2020.

17 (5) The Office of Statewide Health Planning and Development,
18 in consultation with the State Department of Public Health and the
19 board, shall conduct an efficacy study of the program under this
20 subdivision to evaluate improvement in physician and surgeon
21 recruitment and retention in the districts participating in the
22 program, impacts on physician and surgeon and health care access
23 in the communities served by these districts, impacts on patient
24 outcomes, degree of patient and participating physician and surgeon
25 satisfaction, and impacts on the independence and autonomy of
26 medical decisionmaking by employed physicians and surgeons.
27 This study shall be completed and its results reported to the
28 Legislature no later than June 1, 2018.

29 (6) *This subdivision applies to health care districts and to any*
30 *clinic owned or operated by a health care district, provided the*
31 *health care district meets the criteria of, and ensures compliance*
32 *with, the requirements of this subdivision.*

33 (e) A health care district authorized to employ physicians and
34 surgeons pursuant to subdivision (d) shall not interfere with,
35 control, or otherwise direct a physician and surgeon's professional
36 judgment in a manner prohibited by Section 2400 or any other
37 provision of law. Violation of this prohibition is punishable as a
38 violation of Section 2052, by a fine not exceeding ten thousand
39 dollars (\$10,000), by imprisonment in the state prison, by
40 imprisonment in a county jail not exceeding one year, or by both

1 the fine and either imprisonment. This subdivision is declaratory
2 of existing law, and, as such, does not create a new crime or expand
3 the scope of any existing crime.

4 (f) *Nothing in subdivision (d) shall be construed to affect a*
5 *primary care clinic licensed pursuant to subdivision (a) of Section*
6 *1204 of the Health and Safety Code.*

7 (g) *This section shall remain in effect only until January 1, 2021,*
8 *and as of that date is repealed, unless a later enacted statute, that*
9 *is enacted before January 1, 2021, deletes or extends that date.*

10 SEC. 2. *Section 2401 is added to the Business and Professions*
11 *Code, to read:*

12 2401. (a) *Notwithstanding Section 2400, a clinic operated*
13 *primarily for the purpose of medical education by a public or*
14 *private nonprofit university medical school, which is approved by*
15 *the board or the Osteopathic Medical Board of California, may*
16 *charge for professional services rendered to teaching patients by*
17 *licensees who hold academic appointments on the faculty of the*
18 *university, if the charges are approved by the physician and*
19 *surgeon in whose name the charges are made.*

20 (b) *Notwithstanding Section 2400, a clinic operated under*
21 *subdivision (p) of Section 1206 of the Health and Safety Code may*
22 *employ licensees and charge for professional services rendered*
23 *by those licensees. However, the clinic shall not interfere with,*
24 *control, or otherwise direct the professional judgment of a*
25 *physician and surgeon in a manner prohibited by Section 2400 or*
26 *any other provision of law.*

27 (c) *Notwithstanding Section 2400, a narcotic treatment program*
28 *operated under Section 11876 of the Health and Safety Code and*
29 *regulated by the State Department of Alcohol and Drug Programs,*
30 *may employ licensees and charge for professional services*
31 *rendered by those licensees. However, the narcotic treatment*
32 *program shall not interfere with, control, or otherwise direct the*
33 *professional judgment of a physician and surgeon in a manner*
34 *prohibited by Section 2400 or any other provision of law.*

35 (d) *This section shall become operative on January 1, 2021.*

36 ~~SEC. 2.~~

37 SEC. 3. *Section 2401.1 of the Business and Professions Code*
38 *is repealed.*

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